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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW.  
Washington, D.C. 20554

Re: **Ex Parte Presentation**

**FCC Docket No. 96-98**

Dear Ms. Salas:

At the request of Commission staff, attached is a copy of XO Communications' ("XO") recent presentation on ILEC Special Access provisioning issues to be incorporated into FCC Docket 96-98. On July 12, 2001, Cathy Massey, Assistant General Counsel of XO and the undersigned met with Bill Dever, Jonathan Reel, Jeremy Miller, and Julie Veach of the Common Carrier Bureau's Policy and Program Planning Division.

The purpose of the meeting was to discuss issues regarding ILEC Special Access provisioning. At the meeting, XO representatives urged the Commission to adopt Performance Measurements for Special Access services offered by the regional Bell Operating Companies.

The attached document summarizing XO's position on this issue was provided at the meeting.

Should there be any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Daniel Gonzalez  
Vice President, External Affairs

cc: Bill Dever, Policy and Program Planning Division  
Jonathan Reel, Policy and Program Planning Division  
Jeremy Miller, Policy and Program Planning Division  
Julie Veach, Policy and Program Planning Division

**XO COMMUNICATIONS, INC.  
PRESENTATION ON SPECIAL  
ACCESS SERVICES**

**July 12, 2001**

# XO Communications, Inc.

- Facilities-based CLEC (formerly NEXTLINK)
- Operates in 62 U.S. markets, including majority of top 30
- Diverse Network Assets
  - IP-based Long Haul Network
  - Metro Area Fiber Ring Networks
  - Largest holder of Fixed Wireless (LMDS) spectrum in North America

# XO Network Assets



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**xo**  
Not just talk.™

# Loop Alternatives Have Not Broken the ILEC Bottleneck

- While XO builds out its network infrastructure, it continues to remain highly dependent on ILEC “last mile” bottleneck facilities to serve end user customers.
- Access to ILEC UNEs and special access facilities is critical for continued growth and development of local competition.

# Non-discriminatory Deployment of Special Access Facilities is Key to Local Competition

- High-Capacity UNEs and Special Access Facilities are interchangeable.
- Special Access is widely used by CLECs for intraLATA interoffice facilities and local loops.
- While intercity and intracity fiber alternatives are available in many metro areas, often only the ILEC has facilities deployed to a particular building.

# NY PSC Decision

- Verizon's own data and its historical incumbent position indicate that it continues to dominate the special access services marketplace.
- Verizon represents a bottleneck to the development of a healthy, competitive market for special access services.
- Regulation is necessary to assure competitive choices, including performance metrics.
- Verizon treats its retail customers better than it treats other carriers.

# Verizon's XO-Specific Data Shows Provisioning of High Cap Special Access is Abysmal

- Verizon – 01 to 05/2001
  - DC Market
    - On-time FOC delivery ranged from a high of 52% to a low of 18%
  - South Region
    - On-time Service delivery ranged from a high of 85% to a low of 50% for DS3s
    - On-time Service delivery ranged from a high of 83% to a low of 62% for DS1s



# XO's Data Confirms Verizon's Special Access Provisioning is Unacceptable

2500-01

MARKET	TOTAL SPECIAL ACCESS ORDERS	No. and % Provisioned On Time	Average No. of Days Past Due	Average Pending Past Due	Average Interval b/t ASR sent and FOC Received
New York	54 for Oct. to Dec.	5 (9.2%)	21.4	59.7	18.3
Pennsylvania	183 for Oct. to Feb.	22 (12%)	7.2	Incomplete	11.2
DC	113 for Oct. to Feb.	21 (18.5%)	11.2	Incomplete	28.4
Boston	12 for Oct. to Dec.	1 (8.3%)	13.5	Incomplete	18.2
Totals	362	49 (13.5%)	13.3	59.7	18.3

## Poor Provisioning Compounded by “No Facilities” Policy

- Verizon and QWEST routinely reject UNE high capacity claiming “no facilities available.”
- Verizon and QWEST require the order to be resubmitted as special access.
- Verizon and QWEST will build special access facilities at non-TELRIC prices but will not construct UNEs.

# Verizon Abuses “No Facilities” Designation

- Verizon is using the “no facilities” excuse to steer UNE orders to special access.
- The definition of “no facilities” was apparently recently unilaterally expanded by Verizon to include electronics and equipment at the customer premise.
- By moving orders to special access, little scrutiny and higher prices.

# Ameritech Routinely Issues “Blind FOCs” for Special Access

- Ameritech issues initial FOCs for high capacity special access services without determining if the facilities are actually available.
- This results in delays for lack of facilities for approximately 50% of XO Mid-west orders.
- In most cases, Ameritech does not notify XO of lack of facilities until the the day before or day of scheduled installation date.

# EELs Conversion Continues to be Problematic

- ILECs continue to be intransigent in implementing FCC's EELs requirements
- BellSouth process marred by lengthy negotiation of amendments; delayed conversion requests; threats of additional charges; long provisioning intervals.
- Verizon will only convert historical base of special access to UNEs upon payment of prohibitive penalties.

# EELs Conversion Continues to be Problematic (Cont'd)

- ILECs insistence that UNE and special access circuits not be commingled increases CLECs' cost and causes inefficient network design.
- QWEST, for example, disallows UNEs and special access from using same MUX
  - XO must purchase separate MUX for UNE or order all circuits as special access.
  - XO must chose b/t expense of ordering duplicative MUX facilities or non-TELRIC rates for special access facilities.

# Other Jurisdictions Considering Special Access Problems

- NY and Mass. have initiated proceedings to address Verizon's continual failure to meet installation intervals for special access.
- Texas – As of July 1--SBC required to measure special access performance “as another level of disaggregation in all UNE measures” in circumstances where CLEC orders special access in lieu of UNEs.
  - SBC has challenged TX PUC Decision

## FCC and State PUCs Have Jurisdiction To Consider Special Access Problems

- Verizon has challenged state PUC authority to regulate most special access facilities because the facilities are ordered out of FCC tariffs.
- XO believes that complaints may be prosecuted before the FCC or state commissions or both.



## FCC's Jurisdiction Derived from Sections 201 and 208

- Special access facilities that carry more than 10% interstate traffic are subject to federal regulation.
- Section 201 prohibits ILECs from engaging in unjust or unreasonable practices.
- Section 208 permits CLECs to file complaints for violations of Section 201.

## CLECs Can Also Pursue a Federal/State Remedy under the Section 251/252 Regime

- ILECs' inability or refusal to timely provide UNEs may constitute breach of interconnection agreements.
- By provisioning special access as a substitute for UNEs, failure to provide satisfactory provisioning may also violate interconnection agreements and Section 251.
- CLECs can file actions under the 251/252 regime either at FCC or state PUCs